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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ENERGY MANAGEMENT
COLLABORATIVE, LLC, a Minnesota
limited liability company,

Plaintiff/Counterdefendant,

v.

DARWIN TECH LLC, a California
limited liability company, JASON
WHITNEY, an individual, and DOES 1-
100, as follows,

Defendants/Counterclaimants.

AND RELATED COUNTERCLAIMS.

CASE NO. 8:22-cv-00952-JWH(ADSx)

**STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS**

**DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE AUTUMN D. SPAETH**

Assigned to Hon. John W. Holcomb
Crt. Rm.: 9D

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation may be
 5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 6 following Stipulated Protective Order. The parties acknowledge that this Order does not
 7 confer blanket protections on all disclosures or responses to discovery and that the
 8 protection it affords from public disclosure and use extends only to the limited
 9 information or items that are entitled to confidential treatment under the applicable legal
 10 principles. The parties further acknowledge, as set forth in Section 13.3, below, that this
 11 Stipulated Protective Order does not entitle them to file confidential information under
 12 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
 13 standards that will be applied when a party seeks permission from the court to file material
 14 under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 17 information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
 19 is generated, stored or maintained) or tangible things that qualify for protection under
 20 Federal Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their
 22 support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items
 24 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
 25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 26 CONFIDENTIAL – SOURCE CODE.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the
 28 medium or manner in which it is generated, stored, or maintained (including, among other

things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is designated
6 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
9 a Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected
12 Material (as defined above), but also (1) any information copied or extracted from
13 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
14 Material; and (3) any testimony, conversations, or presentations by Parties or their
15 Counsel that might reveal Protected Material. However, the protections conferred by this
16 Stipulation and Order do not cover the following information: (a) any information that is
17 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
18 public domain after its disclosure to a Receiving Party as a result of publication not
19 involving a violation of this Order, including becoming part of the public record through
20 trial or otherwise; and (b) any information known to the Receiving Party prior to the
21 disclosure or obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the
23 Designating Party. Any use of Protected Material at trial shall be governed by a separate
24 agreement or order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed
27 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
28 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)

dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.3(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

5.3 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents,
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
3 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to
5 each page that contains protected material. If only a portion or portions of the material on
6 a page qualifies for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
8 each portion, the level of protection being asserted.

9 A Party or Non-Party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has
11 indicated which material it would like copied and produced. During the inspection and
12 before the designation, all of the material made available for inspection shall be deemed
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party
14 has identified the documents it wants copied and produced, the Producing Party must
15 determine which documents, or portions thereof, qualify for protection under this Order.
16 Then, before producing the specified documents, the Producing Party must affix the
17 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to
19 each page that contains Protected Material. If only a portion or portions of the material on
20 a page qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
22 each portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
24 the Designating Party identify on the record, before the close of the deposition, hearing, or
25 other proceeding, all protected testimony and specify the level of protection being
26 asserted. When it is impractical to identify separately each portion of testimony that is
27 entitled to protection and it appears that substantial portions of the testimony may qualify
28 for protection, the Designating Party may invoke on the record (before the deposition,

1 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the
2 specific portions of the testimony as to which protection is sought and to specify the level
3 of protection being asserted. Only those portions of the testimony that are appropriately
4 designated for protection within the 21 days shall be covered by the provisions of this
5 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
6 deposition or up to 21 days afterwards if that period is properly invoked, that the entire
7 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition,
10 hearing or other proceeding to include Protected Material so that the other parties can
11 ensure that only authorized individuals who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
13 document as an exhibit at a deposition shall not in any way affect its designation as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title
16 page that the transcript contains Protected Material, and the title page shall be followed by
17 a list of all pages (including line numbers as appropriate) that have been designated as
18 Protected Material and the level of protection being asserted by the Designating Party.
19 The Designating Party shall inform the court reporter of these requirements. Any
20 transcript that is prepared before the expiration of a 21-day period for designation shall be
21 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration
23 of that period, the transcript shall be treated only as actually designated.

24 (c) for information produced in some form other than documentary and for any
25 other tangible items, that the Producing Party affix in a prominent place on the exterior of
26 the container or containers in which the information or item is stored the legend
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
28 HIGHLY CONFIDENTIAL – SOURCE CODE. If only a portion or portions of the

information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed in accordance with the procedures in Local Rule 37.1 et seq, if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner..

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to

harass or impose unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure

¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,² and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered

² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 expert testimony, including through a declaration, report, or testimony at a deposition or
2 trial, during the preceding five years.³

3 (b) A Party that makes a request and provides the information specified in the
4 preceding respective paragraphs may disclose the subject Protected Material to the
5 identified Expert unless, within 14 days of delivering the request, the Party receives a
6 written objection from the Designating Party. Any such objection must set forth in detail
7 the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with the
9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
10 agreement within seven days of the written objection. If no agreement is reached, the
11 Party seeking to make the disclosure to the Expert may file a motion as provided in Civil
12 Local Rule 37 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
13 permission from the court to do so. Any such motion must describe the circumstances
14 with specificity, set forth in detail the reasons why the disclosure to the Expert is
15 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest
16 any additional means that could be used to reduce that risk. In addition, any such motion
17 must be accompanied by a competent declaration describing the parties' efforts to resolve
18 the matter by agreement (i.e., the extent and the content of the meet and confer
19 discussions) and setting forth the reasons advanced by the Designating Party for its refusal
20 to approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
22 burden of proving that the risk of harm that the disclosure would entail (under the
23 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
24 Material to its Expert.

25
26 ³ It may be appropriate in certain circumstances to restrict the Expert from undertaking
27 certain limited work prior to the termination of the litigation that could foreseeably result
28 in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
 4 compels disclosure of any information or items designated in this action as
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 6 “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall
 8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to
 10 issue in the other litigation that some or all of the material covered by the subpoena or
 11 order is subject to this Protective Order. Such notification shall include a copy of this
 12 Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 14 the Designating Party whose Protected Material may be affected.⁴

15 If the Designating Party timely seeks a protective order, the Party served with the
 16 subpoena or court order shall not produce any information designated in this action as
 17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 18 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court
 19 from which the subpoena or order issued, unless the Party has obtained the Designating
 20 Party’s permission. The Designating Party shall bear the burden and expense of seeking
 21 protection in that court of its confidential material – and nothing in these provisions
 22 should be construed as authorizing or encouraging a Receiving Party in this action to
 23 disobey a lawful directive from another court.

24 9. SOURCE CODE

25 (a) To the extent production of source code becomes necessary in this case, a
 26 _____

27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of
 28 this Protective Order and to afford the Designating Party in this case an opportunity to try
 to protect its confidentiality interests in the court from which the subpoena or order issued.

1 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE
2 CODE” if it comprises or includes confidential, proprietary or trade secret source code.

3 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
4 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL
5 – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information [*Optional*: including the
7 Prosecution Bar set forth in Paragraph 8], and may be disclosed only to the individuals to
8 whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
9 disclosed, as set forth in Paragraphs 7.3 and 7.4.

10 (c) Any source code produced in discovery shall be made available for
11 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
12 business hours or at other mutually agreeable times, at an office of the Producing Party’s
13 counsel or another mutually agreed upon location. The source code shall be made
14 available for inspection on a secured computer in a secured room without Internet access
15 or network access to other computers, and the Receiving Party shall not copy, remove, or
16 otherwise transfer any portion of the source code onto any recordable media or recordable
17 device. The Producing Party may visually monitor the activities of the Receiving Party’s
18 representatives during any source code review, but only to ensure that there is no
19 unauthorized recording, copying, or transmission of the source code.⁵

20 (d) The Receiving Party may request paper copies of limited portions of source
21 code that are reasonably necessary for the preparation of court filings, pleadings, expert
22 reports, or other papers, or for deposition or trial, but shall not request paper copies for the
23 purposes of reviewing the source code other than electronically as set forth in paragraph
24 (c) in the first instance. The Producing Party shall provide all such source code in paper

26 ⁵ It may be appropriate under certain circumstances to require the Receiving Party to keep
27 a paper log indicating the names of any individuals inspecting the source code and dates
28 and times of inspection, and the names of any individuals to whom paper copies of
portions of source code are provided.

1 form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE
2 CODE.” The Producing Party may challenge the amount of source code requested in hard
3 copy form pursuant to the dispute resolution procedure and timeframes set forth in
4 Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving
5 Party is the “Designating Party” for purposes of dispute resolution.

6 (e) The Receiving Party shall maintain a record of any individual who has
7 inspected any portion of the source code in electronic or paper form. The Receiving Party
8 shall maintain all paper copies of any printed portions of the source code in a secured,
9 locked area. The Receiving Party shall not create any electronic or other images of the
10 paper copies and shall not convert any of the information contained in the paper copies
11 into any electronic format. The Receiving Party shall only make additional paper copies if
12 such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
13 (including a testifying expert’s expert report), (2) necessary for deposition, or (3)
14 otherwise necessary for the preparation of its case. Any paper copies used during a
15 deposition shall be retrieved by the Producing Party at the end of each day and must not
16 be given to or left with a court reporter or any other unauthorized individual.⁶

17 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
18 THIS LITIGATION

19 10.1 The terms of this Order are applicable to information produced by a Non-
20 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
22 SOURCE CODE”. Such information produced by Non-Parties in connection with this
23 litigation is protected by the remedies and relief provided by this Order. Nothing in these
24 provisions should be construed as prohibiting a Non-Party from seeking additional

25 ⁶ The nature of the source code at issue in a particular case may warrant additional
26 protections or restrictions. For example, it may be appropriate under certain circumstances
27 to require the Receiving Party to provide notice to the Producing Party before including
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading,
or expert report.

1 protections.

2 10.2 In the event that a Party is required, by a valid discovery request, to produce
3 a Non-Party's confidential information in its possession, and the Party is subject to an
4 agreement with the Non-Party not to produce the Non-Party's confidential information,
5 then the Party shall:

6 (a) promptly notify in writing the Requesting Party and the Non-Party that some
7 or all of the information requested is subject to a confidentiality agreement with a Non-
8 Party;

9 (b) promptly provide the Non-Party with a copy of the Stipulated Protective
10 Order in this litigation, the relevant discovery request(s), and a reasonably specific
11 description of the information requested; and

12 (c) make the information requested available for inspection by the Non-Party.

13 10.3 If the Non-Party fails to object or seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the Receiving Party
15 may produce the Non-Party's confidential information responsive to the discovery
16 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
17 produce any information in its possession or control that is subject to the confidentiality
18 agreement with the Non-Party before a determination by the court.⁷ Absent a court order
19 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
20 this court of its Protected Material.

21 11.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately:

25 (a) notify in writing the Designating Party of the unauthorized disclosures;

26
27 ⁷ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect
its confidentiality interests in this court.

1 (b) use its best efforts to retrieve all unauthorized copies of the Protected
2 Material;

3 (c) inform the person or persons to whom unauthorized disclosures were made of
4 all the terms of this Order; and

5 (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of
11 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
12 This provision is not intended to modify whatever procedure may be established in an e-
13 discovery order that provides for production without prior privilege review. Pursuant to
14 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
15 effect of disclosure of a communication or information covered by the attorney-client
16 privilege or work product protection, the parties may incorporate their agreement in the
17 stipulated protective order submitted to the court.

18 13. MISCELLANEOUS

19 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person
20 to seek its modification by the court in the future.

21 13.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to disclosing
23 or producing any information or item on any ground not addressed in this Stipulated
24 Protective Order. Similarly, no Party waives any right to object on any ground to use in
25 evidence of any of the material covered by this Protective Order.

26 13.3 Filing Protected Material. Without written permission from the Designating
27 Party or a court order secured after appropriate notice to all interested persons, a Party
28 may not file in the public record in this action any Protected Material. A Party that seeks

1 to file under seal any Protected Material must comply with Civil Local Rule 79-5.
 2 Protected Material may only be filed under seal pursuant to a court order authorizing the
 3 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
 4 sealing order will issue only upon a request establishing that the Protected Material at
 5 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
 6 the law. If a Receiving Party's request to file Protected Material under seal pursuant to
 7 Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the
 8 Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise
 9 instructed by the court.

10 14.FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in paragraph 4,
 12 each Receiving Party must return all Protected Material to the Producing Party or destroy
 13 such material. As used in this subdivision, "all Protected Material" includes all copies,
 14 abstracts, compilations, summaries, and any other format reproducing or capturing any of
 15 the Protected Material. Whether the Protected Material is returned or destroyed, the
 16 Receiving Party must submit a written certification to the Producing Party (and, if not the
 17 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
 18 (by category, where appropriate) all the Protected Material that was returned or destroyed
 19 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
 20 compilations, summaries or any other format reproducing or capturing any of the
 21 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
 22 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
 24 work product, and consultant and expert work product, even if such materials contain
 25 Protected Material. Any such archival copies that contain or constitute Protected Material
 26 remain subject to this Protective Order as set forth in Section 4 (DURATION).

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
 28

1 Dated: September 28, 2023

COZEN O'CONNOR

2
3 By: /s/ Erik L. Jackson
Erik L. Jackson
Attorneys for Plaintiff

5 Dated: September 28, 2023

GREENBERG TRAURIG, LLP

7 By: /s/ Colin W. Fraser
Colin Fraser
Robert A. Hill
Attorneys for Defendants
DARWIN TECH LLC and JASON
10 WHITNEY

11
12 **SIGNATURE ATTESTATION PURSUANT TO L.R. 5-4.3.4(a)(2)(i)**

13 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that the other
14 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
15 content and have authorized this filing.

16 Dated: September 28, 2023

GREENBERG TRAURIG, LLP

18 By: /s/ Colin Fraser
Colin Fraser

21
22
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: 09/29/2023

/s/ Autumn D. Spaeth
Hon. Autumn D. Spaeth
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by
the United States District Court for the Central District of California on
_____ [date] in the case of Energy Management Collaborative, LLC v.
Darwin Tech LLC, Cae No. 8:22-cv-00952 JWH(ADSx). I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in
the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after termination
of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or
any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]